

NOT FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

HECTOR BIENVENIDO SANTILLAN
RODRIGUEZ as Personal
Representative for the ESTATE of
ANTONIO SANTILLAN,

Plaintiff,

v.

NASSER SHARMOUJ and ZILA
SHARMOUJ, Individually and d/b/a
PRINCESSE CASH & CARRY; and
NASSER SHARMOUJ and SAMIRA
SHARMOUJ, Individually and d/b/a
TARGET TIRE AND BATTERY,

Defendants.

Civil No. 2001/0065 G/C

ORDER

THOMPSON, District Judge

On July 16, 2008 the Third Circuit Court of Appeals remanded to this Court the question of whether or not Plaintiff is entitled to fees and costs that were denied upon his successful prosecution of the above personal injury case. The Court of Appeals ruled that it was erroneous for this Court to rely in part on 28 U.S.C. § 1920 because the District Court of the Virgin Islands does not fall within the definition of “court of the United States” in title 28 of the United States Code. Therefore, now referring only to V.I. Code Ann. tit. 5 § 541, the Court reviews Plaintiff’s request for costs.

In Plaintiff’s last amended petition for costs in this personal injury case, Plaintiff seeks a total of \$50,418.25. The Court finds that several of Plaintiff’s itemized costs exceed those

allowed by statute. Further, the Court notes that Plaintiff's itemized bill of costs does not sum to the requested \$50,418.25, even if the Court includes those costs that exceed the statutory limits. Therefore, the Court will review each of Plaintiff's itemized costs and determine whether they are allowed under § 541(a) and will then award the sum of those costs.

There are six categories of allowed costs enumerated in § 541(a):

- (1) Fees of officers, witnesses, and jurors;
- (2) Necessary expenses of taking depositions which were reasonably necessary in the action;
- (3) Expenses of publication of the summons or notices, and the postage when they are served by mail;
- (4) Compensation of a master as provided in Rule 53 of the Federal Rules of Civil Procedure;
- (5) Necessary expense of copying any public record, book, or document used as evidence on the trial.
- (6) Attorney's fees as provided in subsection (b) of this section.

Under category (1), Plaintiff requests several costs associated with its production and examination of witnesses, including its own expert witnesses, at depositions and at trial. The Court will approve the \$40 per day witness fee permitted by 28 U.S.C. § 1821(b). See Dr. Bernard Heller Found. v. Lee, 847 F.2d 83 (3d Cir. 1988) (V.I. District Courts are bound by the limits imposed by 28 U.S.C. § 1821 in awarding witness fees under § 541(a)). The Court will apply this limit as well to Plaintiff's costs associated with its expert witnesses, see id. at 86 (limit applicable to expert witnesses as well), and will therefore deny Plaintiff's request for \$10,750 for trial and \$600 for retainer for the testimony of Dr. Babu Subramamian, Plaintiff's medical expert, and \$21,028.50 for trial and \$2,500 for retainer for Mr. Robert Johnson,¹ Plaintiff's forensic economist from California. The Court will allow subsistence costs and regular transportation

¹ While Plaintiff has listed the \$2,500 retainer cost as a separate item on the amended petition for costs, it appears in fact to be included within the \$21,028.50 listed for Mr. Johnson's trial testimony. (See Invoices of November 30, 2004 and May 17, 2006.)

costs for Mr. Johnson. However, because Plaintiff's amended petition lists \$3,184.00 for Mr. Johnson's travel and subsistence costs, but Plaintiff has failed to submit receipts reflecting Mr. Johnson's actual costs, see § 1821 (requiring "evidence of actual cost" of travel), the Court will allow \$1,000.00 as a reasonable cost for his travel and the U.S. Government maximum subsistence for St. Croix in May 2006, which was \$284.00 per day. The Court will also allow the costs of service of all witness subpoenas and interpreter costs for deposition witnesses, but the Court will not approve such interpreter fees for trial witnesses because the Court is capable of providing interpreter services for the parties at trial.

Additionally, under categories (2), (3) and (5), Court filing fees and service of process costs will be allowed. Hospital records and subpoena fees accompanying them will be allowed. Transcript costs will be allowed. The costs for Internal Revenue Service records will be allowed as well as a witness document charge by a Mr. Robert Matthews.

The costs of blowing up and developing exhibits do not appear to be encompassed under any of the enumerated categories in § 541(a) and will be denied. See § 541(a); see also Lempert v. Singer, No. 90-200, 1993 WL 661181, at *2 (D.V.I. 1993) (photocopying costs not included under § 541(a) and "while the express language of § 541(a) does not necessarily preclude the court from assessing costs other than those specifically enumerated, the court's discretion in taxing such costs is to be sparingly exercised").

Plaintiff has not sought attorney's fees under category (6).

Based on the foregoing, the Court rules below on each of Plaintiff's itemized requests:

Date	Description	Amount
4/10/01	Filing fee District Court	\$50.00 Granted
4/25/01	Service of Process	\$105.00 Granted

5/15/01	Territorial Court Filing Fee	\$50.00	Granted
6/9/01	Service of Process	\$90.00	Granted
6/8/01	Juan Luis Hospital Medical Records	\$6.00	Granted
12/20/01	A Better Copy	\$12.00	Denied
11/21/02	A Better Copy	\$60.00	Denied
11/21/02	A Better Copy	\$15.00	Denied
4/23/03	Interpreter for Deposition-N.Asencio	\$160.00	Granted
5/28/03	Deposition Transcript-Antonio Santillan	\$247.00	Granted
6/13/03	Service of Subpoenas	\$70.00	Granted
7/22/03	Dr. Babu Expert Retainer	\$600.00	Denied
4/23/04	Mediation Fee	\$815.50	Granted
9/20/04	Deposition Transcript-Sandra Hall	\$89.10	Granted
9/22/04	Service of Subpoena	\$220.00	Granted
10/6/04	Witness Fees (6 Witnesses @\$40.00)	\$240.00	Granted
10/16/04	Sub-Service	\$245.00	Granted
10/22/04	Deposition Transcript-Samira Sharmouj	\$225.00	Granted
10/22/04	Deposition Transcript-Zila Sharmouj	\$375.00	Granted
10/22/04	Deposition Transcript-Nasser Sharmouj	\$590.00	Granted
10/22/04	Service of Subpoena	\$35.00	Granted
11/4/04	Subpoena Service	\$140.00	Granted
11/18/04	Deposition Transcript-Donald Law	\$324.60	Granted
11/18/04	Deposition Transcript-Rafael Acevedo	\$322.45	Granted
11/18/04	Deposition Transcript-Jorge Borque	\$375.35	Granted
11/18/04	Deposition Transcript-Jose Silva	\$389.70	Granted
11/18/04	Deposition Transcript-Altagracia Borque	\$200.00	Granted
11/18/04	Deposition Transcript-Stephen Garvey	\$96.75	Granted
11/18/04	Deposition Transcript-Dinorah Singh	\$170.00	Granted
11/22/04	Juan Luis Hospital Medical Records	\$10.00	Granted
11/24/04	Retainer Robert Johnson	\$2,500.00	Denied
12/16/04	Payment to Robert Johnson	\$4,828.50	Denied
1/27/05	Subpoena Service	\$105.00	Granted
1/31/05	Copying Exhibits	\$567.60	Denied
2/4/05	Juan Luis Hospital Records	\$45.00	Granted
2/4/05	Juan Luis Hospital Records	\$32.00	Granted
2/16/05	Subpoena Documents-Dept. of Licensing & Consumer Affairs	\$136.00	Granted
2/18/05	Deposition Transcript-Antonio Santillan	\$137.50	Granted
2/24/05	Subpoena Service	\$35.00	Granted
3/9/05	A Better Copy	\$48.00	Denied
3/14/05	IRS for Tax Records	\$195.00	Granted
8/23/05	Photo Blow Up	\$48.00	Denied
11/29/05	Photo/Video Copy	\$345.00	Denied
1/27/06	The Frame Up (Mount Color Photographs)	\$228 .20	Denied
3/30/06	Witness Fees (21 Witnesses @\$40.00)	\$840.00	Granted

4/08/06	Trial Subpoena Service (22 Witnesses @ \$40.00)	\$880.00	Granted
4/13/06	Witness Fee-C.Belardo	\$40.00	Granted
4/21/06	Juan Luis Hospital Records	\$66.00	Granted
5/5/06	Witness Document Charge- Robert Matthews	\$19.00	Granted
5/17/06	Johnson Trial Testimony and Travel	\$16,200.00	Denied
5/17/06	Johnson Travel and Meals	\$3,184.00	Denied
5/17/06	Dr. Babu Subramamian Trial Testimony	\$10,750.00	Denied
5/23/06	Interpreter for Trial-Emmy Hodge	\$2,860.00	Granted

In place of Plaintiff's requested expert witness costs, the Court awards:

5/17/06	Dr. Babu Subramamian witness fee	\$40.00	Granted
5/17/06	Subsistence and Travel for Robert Johnson (\$1,000 in travel costs and 2 days subsistence at \$284)	\$1,568.00	Granted
5/17/06	Johnson witness fee	\$40.00	Granted

Total costs granted to Plaintiff: \$12,679.95.

The above represents the Court's revised allocation of costs relying upon the Virgin Islands statute and V.I. case law.

DATE: February 10, 2009

ENTERED AND ORDERED:

s/ Anne E. Thompson
ANNE E. THOMPSON
U.S. DISTRICT JUDGE